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PRO SE APPELLANT:

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**IN THE
COURT OF APPEALS OF INDIANA**

LESTER D. FRENCH,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 33A04-0605-CR-235
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HENRY CIRCUIT COURT
The Honorable Mary G. Willis, Judge
Cause No. 74-CR-27

October 2, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Lester D. French, pro se, appeals the trial court's denial of his motion to correct sentence. Because the claims in French's motion to correct sentence require consideration of matters outside the face of the sentencing judgment, the claims are not appropriate for such a motion. We therefore affirm the trial court.

Facts and Procedural History

The underlying facts of this case, taken from the Indiana Supreme Court's 1977 opinion in French's direct appeal, are as follows:

[T]he evidence at trial revealed that at about 5:00 p.m., July 22, 1974, the Appellant robbed the family grocery store of Pauline Hart in Summitville, Indiana. During the course of the robbery, Mrs. Hart's granddaughter, Kathy Wylie, entered the store. When the Appellant took money and two cartons of cigarettes from the store, he also took Miss Wylie.

The Appellant and his captive emerged from the store and entered a waiting automobile driven by Charles L. Martin. Martin testified at trial that he and the Appellant both had sexual intercourse with Miss Wylie in the car during the course of their drive. "(T)oo scared to say anything," she was also sodomized by the Appellant. After some period of time, the Appellant indicated to Martin that they had to "get rid" of their victim. The car was stopped. Each man took his turn at bludgeoning the girl with a pipe wrench. When she still exhibited signs of life, she was rolled down a river embankment. Her head was held beneath the water until her struggling stopped. Pathological examination of the decedent established asphyxia due to drowning as the cause of death.

French v. State, 266 Ind. 276, 362 N.E.2d 834, 836 (1977). A grand jury indicted French for first-degree murder while engaged in the commission of a kidnapping; kidnapping; commission of a felony (robbery) while armed; commission of a felony (rape) while armed; and carrying a handgun without a license. *Id.* Following a 1975 jury trial, French was found guilty of all five counts. *Id.* The trial court sentenced French to

death for his murder conviction, life imprisonment for his kidnapping conviction, fifteen years imprisonment for each of his armed felony convictions, and six months imprisonment for his conviction of carrying a handgun without a license. *Id.* The trial court ordered the terms of imprisonment to run consecutively. *Id.*

On direct appeal, our Supreme Court vacated French's death sentence and imposed a life sentence instead. *Id.* at 842. The court otherwise affirmed his convictions. In 1979, French filed a motion to correct sentence, which was withdrawn and re-filed in 1982. *French v. State*, 547 N.E.2d 1084, 1085 (Ind. 1989). This resulted in the trial court vacating French's life sentence for kidnapping. *Id.* In 1983, French filed a petition for writ of habeas corpus in federal court. *Id.* However, this was dismissed for the reason that he had not exhausted his state remedies. *Id.* In 1985, French filed a petition for post-conviction relief, which the post-conviction court denied. On appeal, our Supreme Court affirmed the post-conviction court. *Id.* at 1088.

In 2002, French filed a motion to correct sentence, which the trial court denied. In 2006, French again filed a motion to correct sentence. The trial court denied the motion that same day, noting it was a successive motion. French, pro se, now appeals.

Discussion and Decision

French, pro se, contends that the trial court erred in denying his motion to correct sentence. French's motion to correct sentence derives from Indiana Code § 35-38-1-15, which provides:

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his

counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

“The purpose of the statute is to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence.” *Robinson v. State*, 805 N.E.2d 783, 785 (Ind. 2004).

“When an error related to sentencing occurs, it is in the best interests of all concerned that it be immediately discovered and corrected.” *Id.* at 786. Other than an immediate motion to correct sentence, such errors are best presented to the trial court by the optional motion to correct error under Indiana Trial Rule 59 or upon a direct appeal from the final judgment of the trial court pursuant to Indiana Appellate Rule 9(A). *Id.* Thereafter, for claims not waived for failure to raise them by direct appeal, a defendant may seek recourse under Indiana Post-Conviction Rule 1, § 1(a)(3) by claiming “that the sentence exceeds the maximum authorized by law, or is otherwise erroneous.” *Id.* As noted above, however, Indiana courts have recognized the statutory motion to correct sentence as an alternate remedy. *Id.* A trial court’s ruling on a motion to correct sentence is subject to appeal by normal appellate procedures. *Id.*

When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings, where applicable. *Id.* at 787. Use of the statutory motion to correct sentence should be narrowly confined to claims apparent from the face of the sentencing judgment, and the “facially erroneous” prerequisite should henceforth be strictly applied, notwithstanding previous case law. *Id.* As such, a motion

to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. *Id.* Claims that require consideration of proceedings before, during, or after trial may not be presented by way of a motion to correct sentence. *Id.*

French claims that his sentence is erroneous for four main reasons. First, French argues that the trial court erred in ordering his sentences to run consecutively because “each of the five (5) charged offenses derive from a single episode of criminal conduct.” Appellant’s Br. p. 7. Determining whether several offenses constitute a single episode of criminal conduct requires consideration of matters outside the face of the sentencing judgment; therefore, this claim is inappropriate for a motion to correct sentence. Second, French argues that the trial court erred in entering judgment of conviction for kidnapping, robbery, rape, and carrying a handgun without a license because they are lesser-included offenses of murder, violating double jeopardy principles. Again, determining whether these offenses are lesser-included offenses of murder and therefore constitute double jeopardy requires consideration of matters outside the face of the sentencing judgment. This claim is also inappropriate for a motion to correct sentence.

Third, French argues that the trial court “was without express statutory authority to order [his] sentences to run consecutive to each other.” Appellant’s Br. p. 13. Specifically, French claims that Indiana Code § 35-50-1-2, which addresses concurrent and consecutive sentences, did not exist at the time he committed the crimes in this case. It is true that Indiana Code § 35-50-1-2 was enacted in 1977 and therefore was not in effect at the time French committed the crimes in this case. However, our Supreme Court

has already determined that the trial court did not err in ordering French's sentences to run consecutively under the law that existed at the time he committed the crimes. *French*, 547 N.E.2d at 1086. And in making this determination, the court analyzed the facts of the case, which are not apparent from the face of the sentencing judgment. *See id.* As such, this claim is not appropriate for a motion to correct sentence.

Fourth, French argues that the trial court should have vacated his conviction for kidnapping when it vacated his sentence for that crime. As a result of the motion to correct sentence that French filed in 1982, the trial court vacated his life sentence for kidnapping. *Id.* at 1085. French claims that when the trial court vacated his sentence for kidnapping, it apparently neglected to vacate that conviction as well. However, this is not a sentencing claim and therefore is inappropriate for a motion to correct sentence.¹

Affirmed.

BAKER, J., and CRONE, J., concur.

¹ As a final matter, French argues that the trial court erred in denying his motion to correct sentence without first holding a hearing. However, French cites no authority requiring such a hearing; therefore, this argument fails.